

BEFORE THE OIL & GAS COMMISSION

MICHAEL L. KISER, *dba* BOOTSTRAP OIL, :

Case No. 775

Appellant, :

Review of Chief's Order 2006-127

-vs- :

DIVISION OF MINERAL RESOURCES
MANAGEMENT, :

FINDINGS, CONCLUSIONS & ORDER OF THE COMMISSION

Appellee. :

Appearances: Michael L. Kiser, on behalf of Appellant Michael L. Kiser *dba* Bootstrap Oil; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: November 21, 2008

BACKGROUND

This matter came before the Oil & Gas Commission upon appeal Michael L. Kiser, on behalf of Bootstrap, Inc., from Chief's Order 2006-127. Chief's Order 2006-127 alleged that, over a period of several years, Bootstrap had failed to file statements of production for sixteen wells located in Ashland and Medina Counties, Ohio.

On July 25, 2008, this cause came on for hearing before four members of the Oil & Gas Commission. No representative of Michael Kiser or Bootstrap, Inc. appeared. At the commencement of hearing, the Appellee Division of Mineral Resources Management ["Division"] moved to dismiss this appeal for Appellant's failure to appear and prosecute. The Commission reserved ruling upon this motion, and the Division proceeded to present evidence in support of Chief's Order 2006-127.

ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in issuing Chief's Order 2006-127 to Michael Kiser, *dba* Bootstrap, Inc.**

THE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.11 provides in part:

The owner of any well producing or capable of producing oil or gas shall file with the chief of the division of mineral resources management, on or before the first day of March, a statement of production of oil, gas, and brine for the last preceding calendar year in such form as the chief may prescribe.

3. O.R.C. §1509.01(K) defines an "owner" as:

. . . the person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

4. O.R.C. §1509.12 provides in part:

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged, but no well shall be required to be plugged under this section that is being used to produce oil or gas for domestic purposes . . . When the chief finds that a well should be plugged, the chief shall notify the owner to that effect by order in writing and shall specify in such order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. . .

FINDINGS OF FACT

1. Bootstrap, Inc. is identified as the owner of sixteen wells located in Ashland or Medina Counties, Ohio. These wells are known as:

M.C. MacHaffey #5 Well	Ashland County
M.C. MacHaffey #8 Well	Ashland County
M.C. MacHaffey #9 Well	Ashland County
M.C. MacHaffey #14 Well	Ashland County
M.C. MacHaffey #15 Well	Ashland County
M.C. MacHaffey #17 Well	Ashland County
M.C. MacHaffey #20 Well	Ashland County
M.C. MacHaffey #22 Well	Ashland County
Middaugh (M.C. MacHaffey) #24 Well	Ashland County
K. Middaugh #19 Well	Ashland County
M. Middaugh #30 Well	Ashland County
M. Middaugh #33 Well	Ashland County
M. & O. Middaugh #35 Well	Ashland County
J. & J. Malusky #1 Well	Medina County
J. & J. Malusky #2 Well	Medina County
J. & J. Malusky #3 Well	Medina County

The wells located in Ashland County are developed in the Berea Formation. The wells located in Medina County are developed in the Clinton Formation. Some of the Berea wells were drilled in the 1950's. Most of the wells operated up until the mid-1990's.

2. A "form 9" is a document maintained by the Division, which provides information on the "Authority and Organization" of a well operator, and is used by the Division to establish ownership of wells. On October 31, 1989, a form 9 was filed by Bootstrap, Inc. This form contained the following information relevant to Bootstrap, Inc.:

name and address of the authorized agent:

Harry Jones
7548 Slate Ridge Blvd.
Reynoldsburg, Ohio

name and address of the statutory agent:

Harry Jones
7548 Slate Ridge Blvd.
Reynoldsburg, Ohio 43068

the form is signed by Michael L. Kiser (under "signature of owner/authorized agent"), Mr. Kiser's title is given as treasurer

the form is notarized by Harold Harry Jones, Jr.

3. On October 18, 2006, the Division issued Chief's Order 2006-127 to Bootstrap, Inc. This Order was issued for Bootstrap's failure to file production reports for sixteen wells (the wells are identified in Finding of Fact #2). The Chief's Order alleged that production reports had not been filed since 1991. Chief's Order 2006-127 required Bootstrap to:

- (1) place the wells into production (within 10 days),
- (2) plug the wells (within 30 days), or
- (3) submit production reports (for years 1991 - 2005) for the wells.

The Chief's Order was addressed to:

Michael L. Kiser, Authorized Agent/Treasurer
dba Bootstrap, Inc.
2891 Ambarwent Road
Reynoldsburg, Ohio 43058

4. In January 2007, three months after the issuance of Chief's Order 2006-127, Division Inspector Harold Moravy inspected the sixteen wells owned by Bootstrap. Inspection Reports from January 2007 were entered into evidence at hearing for each well except the Middaugh #35 Well. The Inspection Reports reflect the following information regarding the condition of these wells in January 2007:

M.C. MacHaffey #5 Well	no equipment on well, open 4.5" hole above ground, no production reported since 1991
M.C. MacHaffey #8 Well	well is equipped with rods and tubing, but no pump jack, no production reported since 1991
M.C. MacHaffey #9 Well	equipped with rods and tubing, but no pump jack, no production reported since 1991
M.C. MacHaffey #14 Well	well is equipped with pump jack, rods and tubing but is idle, no production reported since 1991
M.C. MacHaffey #15 Well	well equipment has been removed, 8" and 6" casing at ground level, electric box at site, no production reported since 1991
M.C. MacHaffey #17 Well	well is equipped with pump jack, rods and tubing but is idle, new electric box at well, no production reported since 1991

M.C. MacHaffey #20 Well	well equipped with pump jack, rods and tubing, new electric box at well site, in January 2007 well was producing and being operated by Steve Harley
M.C. MacHaffey #22 Well	well equipped with rods and tubing, but no pump jack, new production oil lines have been laid under ground east of well, no production reported since 1991
Middaugh (MC MacHaffey) #24 Well	well equipped with pump jack, rods and tubing, new electric box and lines buried underground to well, in January 2007 well was producing and being operated by Steve Harley
K. Middaugh #19 Well	no equipment, old electric box and wires, 2" tubing is bent over at ground level, no other casing visible, no production reported since 1991
M. Middaugh #30 Well	well equipped with pump jack, rods and tubing, new electric box and lines laid underground to well, in January 2007 well was producing and being operated by Steve Harley
M. Middaugh #33 Well	well equipped with pump jack, rods and tubing, new electric boxes and lines laid underground to well, in January 2007 well was producing and being operated by Steve Harley
M. & O. Middaugh #35 Well	(no inspection report) Inspector testified: well was stripped of all equipment, and consisted of casing cut off at ground level, some oil seepage present
J. & J. Malusky #1 Well	well is equipped with 4.5" casing and a valve, no commercial gas being produced, but in January 2007 landowner was using well for domestic gas to his home
J. & J. Malusky #2 Well	well is equipped with 4.5" casing and a valve, valve is closed at meter, no production has been reported since 1991
J. & J. Malusky #3 Well	well is equipped with 4.5" casing, 1.5" tubing and rabbit, but is idle, no production reported since 1991

5. Harry Jones is identified on the form 9 on file with the Division as the "Authorized Agent and Statutory Agent" for Bootstrap, Inc. In the past, the Division has dealt with Mr. Jones, when addressing the Bootstrap's wells. The last contact between the Division and Mr. Jones was in either 1995 or 1996. The Division has made several attempts to contact Mr. Jones. However, the Division is currently unable to locate Mr. Jones.

6. Michael L. Kiser signed the form 9 on file with the Division as the Owner/Authorized Agent of Bootstrap, Inc. On that form, Mr. Kiser gives his title as treasurer of this company. Chief's Order 2006-127 was issued to Michael Kiser, *dba* Bootstrap, Inc.

7. On October 25, 2006, Mr. Kiser appealed Chief's Order 2006-127 to the Oil & Gas Commission. His Notice of Appeal stated in its entirety:

I have received your [the Division's] order by the chief and wish to inform you that I have had no affiliation with Bootstrap oil since January 1991. The last person to be in control of this corporation was Harold Harry Jones.

8. On November 6, 2006, the Commission notified Mr. Kiser that a hearing on this matter would be held before the Commission on November 20, 2006. On November 14, 2006, Mr. Kiser filed a letter with the Commission, stating in its entirety:

As I have previous[ly] stated, I left any involvement in Bootstrap in very early 1991. I never had an active role in the operation. The company was controlled and operated by Harry Jones. I am not certain that I could add anything or shed light on anything since my last knowledge is fifteen years old. I have no knowledge as to the current location of Mr. Jones.

I am currently involved in a chapter 13 bankruptcy and find it very difficult to miss work. The required payments are large compared with my current earnings and any los[s] of time would make it very difficult if not impossible to make the payments.

9. In response to Mr. Kiser's November 14, 2006 correspondence, the Commission sent a letter to Mr. Kiser on November 16, 2006, encouraging him to discuss his situation with the Division and continuing the hearing of his appeal until December 11, 2006.

10. On November 30, 2006, pursuant to notice, a telephone conference call was conducted by the Oil & Gas Commission, with Mr. Kiser and an Assistant Attorney General representing the Division. During this call, Mr. Kiser identified himself as a "book-keeper" for Bootstrap, Inc. Mr. Kiser also indicated that he was having health problems.

11. During the November 30, 2006 conference, the parties requested a continuance of the December 11, 2006 hearing, and the Division agreed to contact the Division Inspector for the Bootstrap wells, in order to determine if there was any possibility that the wells might be transferred to another operator in the area.

12. In January 2007, a Division Inspector Moravy visited each of the Bootstrap wells, and inspection reports were generated setting forth the condition of the various wells.

13. While the Division had historically dealt with Mr. Jones regarding the Bootstrap wells, after the filing of the Notice of Appeal to this Commission, the Division dealt with Mr. Kiser regarding the wells. The Division Inspector testified that Mr. Kiser did not wish to place the Bootstrap well back into production, and was interested in transferring the wells to another operator. Efforts were made, with the aid of the Division, to transfer the Bootstrap well to another operator. Ultimately, these efforts were unsuccessful.

14. On January 2, 2007, the Commission again scheduled this matter for hearing, to take place on April 26, 2007. On April 19, 2007, the Division filed a Motion to Continue the April 26, 2007 hearing, indicating that Mr. Kiser was "in negotiations with a third party to take over responsibility for and/or plug the wells permitted to Bootstrap Oil." Mr. Kiser did not oppose the Division's Motion, and the hearing was continued until October 10, 2007.

15. In anticipation of the October 10, 2007 hearing, a telephone pre-hearing conference was scheduled by the Commission for September 21, 2007. On September 20, 2007, the Commission received the following correspondence from Mr. Kiser:

I will not be able to take part in the phone conference on September 21, 2007. At this point I am still taking chemo therapy for Lymphoid Leukemia. The extended period of Doctor visits, chemo therapy and drugs have left me financially strained. My sick days and vacation days have be[en] almost completely used up.

We are currently attempting to keep our home out of foreclosure. We expect to have a hearing in the United States Bankruptcy court some time in Mid October 2007.

At this point in time I feel that I'm already fighting on too many fronts. Please do what you feel is best for I no longer have the energy to or the time to continue in this struggle with the Ohio Department of Natural Resources.

In closing, I would once again state that I left any association with Bootstrap Oil in Jan. 1991. I never did any business as Bootstrap Oil. My only fault in this is that I did not know to notify the State of Ohio that I left Bootstrap Oil. It is not my fault that the State of Ohio cannot locate Harold Jones.

Following the receipt of this letter, the Division moved for a continuance of the October 10, 2007 hearing date. The Commission granted the requested continuance and rescheduled the hearing for April 25, 2008. That hearing date was later continued, upon unopposed motion of the Division to July 25, 2008.

16. This matter came on for hearing on July 25, 2008. The Division appeared for hearing. No representative of Michael Kiser or Bootstrap, Inc. appeared. The Commission opened the Record, and heard a Motion to Dismiss by the Division, based upon Appellant's failure to appear. The Commission reserved ruling upon this Motion. The Division then presented its evidence in support of the issuance of Chief's Order 2006-127.

17. After the hearing, but on July 25, 2008, the Commission retrieved a phone message from Mr. Kiser, placed during the early morning hours of July 25, 2008, in which Mr. Kiser informed the Commission that he would not be attending the hearing in Bootstrap's appeal.

18. After the hearing, the Commission retrieved a fax transmission sent by Mr. Kiser at approximately 6:00 a.m. on July 25, 2008. This transmission stated in its entirety:

I [am] sorry I will not be able to attend the hearing today. I have had so much on my mind that I forgot until I turned the calendar this morning. My health issues [have] gotten a little worse and my financial condition is much worse, I now owe several thousand dollars in medical bill[s]. We are still in the middle of our attempt to save the house. I have had to use most of my allotted time off for sickness and find it necessary to work as much as I can to make ends meet. I have [little] energy left to fight the additional battle. Please do what[ever] you believe is necessary to resolve the problem.

As I have always said I have never done business as [Bootstrap] Oil and I am will[ing] to agree to any term anyone has in taking over the wells.

I'm sorry about the confusing voice mail, but as I have already said my mind is overloaded with problems.

The last contact between Mr. Kiser and the Division Inspector was in February 2007.

CONCLUSIONS OF LAW

1. Bootstrap, Inc. is the owner of sixteen oil & gas wells located in Ashland and Medina Counties, Ohio.

2. On October 31, 1989, a "form 9" also known as an "Authority and Organization Form," was filed with the Division for Bootstrap, Inc. Michael L. Kiser's signature appears on this form. Mr. Kiser is identified as the owner and treasurer of Bootstrap, Inc.

3. Production reports for the sixteen Bootstrap wells located in Ashland and Medina Counties have not been filed since 1991.

4. Several of the Bootstrap wells located in Ashland and Medina Counties are currently idle or incapable of producing oil & gas in commercial quantities. State of Ohio v. Baldwin Producing Corporation, No. 76AP-892 (Ct. App., Franklin Cty. [March 10, 1977]). These wells are not equipped with production equipment.

5. The Division's evidence established that as recently as January 2007, some of the Bootstrap wells were producing oil & gas. These wells are:

M.C. MacHaffey #20 Well
Middaugh (MacHaffey) #24 Well
M. Middaugh #30 Well
M. Middaugh #33 Well

The above-listed wells are not idle or incapable of production.

6. The Division's evidence established that as recently as January 2007, one of the Bootstrap wells was providing a domestic gas supply to a landowner. This well is:

J. & J. Malusky #1 Well

The above-listed well is not idle.

7. The owner of a well is obligated by law to file a statement of production with the Division of Mineral Resources Management on an annual basis.

8. The owner of a well is responsible to plug a well that has become idle or incapable of production in commercial quantities.

9. O.R.C. §1509.12 states that the Chief will not require the plugging of a well being used for domestic purposes.

10. Appellant Michael Kiser did not appear at hearing and presented no evidence to establish that the issuance of Chief's Order 2006-127 was unreasonable or unlawful.

11. It was not unreasonable or unlawful for the Chief to issue a Chief's Order 2006-127 to Michael Kiser, as owner/authorized agent and treasurer of Bootstrap, Inc.

DISCUSSION

Ohio oil & gas law requires the owner of an oil & gas well to file a statement of production with the Division of Mineral Resources Management on an annual basis. See O.R.C. §1509.11. The law defines a "well owner" as a person who has the right to produce a well. See O.R.C. §1509.01(K). There may, indeed, exist more than one owner for any given well, and all persons with sufficient ownership interest are jointly responsible for the well. Houser v. Brown, 29 Ohio App. 3d 358, 360 (Franklin Cty., 1986). The Division may look to any such owner in its enforcement of the law.

Chief's Order 2006-127 was issued in October 2006, and was based upon the Division's finding that production reports had not been filed for sixteen wells owned by Bootstrap, Inc. since 1991. The issuance of Chief's Order 2006-127 was not preceded by a field inspection; rather this was more of a "paperwork" violation, asserting a failure to file appropriate documents with the Division.

In January 2007, approximately three months after the issuance of Chief's Order 2006-127, the sixteen wells at issue were field-inspected by the Division. The evidence at hearing revealed that eleven of the sixteen Bootstrap wells were idle, and appeared to have been incapable of commercial production for a substantial amount of time. Four of the wells were found to be producing oil & gas. One well was being utilized as a domestic supply for a landowner.

Division Inspector Moravy testified as to the condition of sixteen Bootstrap wells in January of 2007. In determining that eleven of these wells were idle and incapable of production, the inspector considered the physical ability of these eleven wells to produce. The lack of surface and in-hole equipment necessary for commercial production indicates that a well is incapable of production. See State v. Baldwin Producing Corp., case no. 76 AP-892 (Ct. of App. for Franklin Cty., March 10, 1977). The Inspector's direct observation of the wells, as reflected in his inspection reports, show that eleven of the wells were not equipped for production.

Once a well becomes incapable of producing oil and gas in commercial quantities, the law requires that the well owner plug the idle well and restore the well site. See O.R.C. §1509.12; O.R.C. §1509.072(B).

In Houser v. Brown, *supra*, the Court stated that the duty to plug an nonproductive well is a "continuing duty," which attaches once the well is rendered incapable of production in commercial quantities. The Houser Court further noted that the question of who among the various "owners" of a well will ultimately bear the responsibility to pay the cost of plugging " . . . is a private matter between them . . . " as several owners may share this statutory duty to plug. Houser v. Brown, *supra* at 360.

Mr. Kiser, although not present at hearing, has informed the Commission through various filings in this appeal, that he has had limited involvement with the wells at issue, and that Harry Jones, the company's authorized agent and statutory agent, was primarily involved with the production of these wells. The Division Inspector confirmed that, historically, the Division had dealt with Mr. Jones in regards to the wells at issue. However, the Division's last contact with Mr. Jones was in 1995 or 1996. The Division has not been able to locate Mr. Jones.

The Division's form 9 lists Michael Kiser as the company owner, and Mr. Kiser's signature appears on that document. No revised form 9 has been submitted to the Division. Therefore, the Division's official files clearly show Mr. Kiser as a responsible party for these wells. The Division should be able to rely upon its official forms to determine well ownership.

Mr. Kiser is listed as an owner of the Bootstrap wells. As an owner, Mr. Kiser is legally obligated to file annual production reports on any wells owned by Bootstrap. This obligation applies even to wells, which are no longer commercially producing, and are being used only of domestic purposes. As an owner, Ms. Kiser is also responsible to plug any non-productive Bootstrap wells. The responsibility to plug the non-productive wells attached when the wells became incapable of production in commercial quantities. That duty is assigned to the well owner and continues to this day.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **DENIES** the Division's Motion to Dismiss for failure to appear and **AFFIRMS** the Division's issuance of Chief's Order 2006-127.

See attached sheets
M. HOWARD PETRICOFF, Acting Chair

JOHN A. GRAY

JAMES H. CAMERON

TIMOTHY C. McNUTT

ABSTAINED
ROBERT W. CHASE

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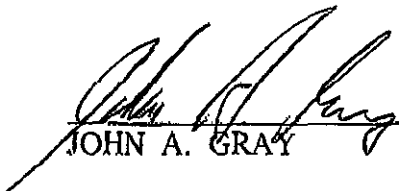
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JOHN A. GRAY

JAMES H. CAMERON



TIMOTHY C. McNUTT

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ROBERT W. CHASE

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

DISTRIBUTION:

Michael L. Kiser, Via Regular Mail and Certified Mail #: 91 7108 2133 3934 5974 5312
Molly Corey, Via Inter-Office Certified Mail #: 6470

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Appellant,	:	
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DIVISION OF MINERAL RESOURCES	:	
MANAGEMENT,	:	<u>INDEX OF EVIDENCE</u>
	:	<u>PRESENTED AT HEARING</u>
Appellee.	:	

Before: M. Howard Petricoff.

In Attendance: Jim Cameron, John Gray, Timothy McNutt.

Appearances: Michael L. Kiser, on behalf of Appellant Michael L. Kiser *dba* Bootstrap Oil [DID NOT APPEAR AT HEARING]; Molly Corey, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

WITNESS INDEX

Appellee's Witnesses:

Harold Moravy	Direct Examination
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EXHIBIT INDEX

Appellee's Exhibits:

Appellee's Exhibit A	Authority and Organization Form, Form 9, Bootstrap, Inc. filed October 31, 1989
Appellee's Exhibit B	Chief's Order 2006-127
Appellee's Exhibit C	Inspection Report; January 17, 2007; K. Middaugh Well #19

Appellee's Exhibit D	Inspection Report; January 11, 2007; M.C. MacHaffey Well #5
Appellee's Exhibit E	Inspection Report; January 11, 2007; M.C. MacHaffey Well #8
Appellee's Exhibit F	Inspection Report; January 11, 2007; M.C. MacHaffey Well #9
Appellee's Exhibit G	Inspection Report; January 17, 2007; M.C. MacHaffey Well #14
Appellee's Exhibit H	Inspection Report; January 17, 2007; M.C. MacHaffey Well #15
Appellee's Exhibit I	Inspection Report; January 17, 2007; M.C. MacHaffey Well #17
Appellee's Exhibit J	Inspection Report; January 17, 2007; M.C. MacHaffey Well #20
Appellee's Exhibit K	Inspection Report; January 11, 2007; M.C. MacHaffey Well #22
Appellee's Exhibit L	Inspection Report; January 11, 2007; Middaugh (W.C. MacHaffey) Well
Appellee's Exhibit M	Inspection Report; January 11, 2007; M. Middaugh Well #33
Appellee's Exhibit N	Inspection Report; January 11, 2007; M. Middaugh Well #30
Appellee's Exhibit O	Inspection Report; January 11, 2007; J. & J. Malusky Well #3
Appellee's Exhibit P	Inspection Report; January 11, 2007; J. & J. Malusky Well #2
Appellee's Exhibit Q	Inspection Report; January 11, 2007; J. & J. Malusky Well #1